

# STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION  
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INDIANAPOLIS, INDIANA 46204-2764

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IN THE MATTER OF THE PETITION )  
OF THE CITY OF GARY, INDIANA )  
REQUESTING THE INDIANA UTILITY )  
REGULATORY COMMISSION TO )  
ESTABLISH THE TERMS AND )  
CONDITIONS OF THE SALE OF )  
CERTAIN PROPERTY OF NORTHERN )  
INDIANA PUBLIC SERVICE COMPANY )  
TO THE CITY OF GARY AND FOR A )  
DETERMINATION OF THE VALUE OF )  
SUCH PROPERTY UNDER INDIANA )  
CODE SECTIONS 8-1-2-92 AND 8-1-2-93 )  
RESPONDENT: NORTHERN INDIANA )  
PUBLIC SERVICE COMPANY )

**FILED**

OCT 25 2004

INDIANA UTILITY  
CAUSE NO. 42645 REGULATORY COMMISSION

You are hereby notified that on this date the Indiana Utility Regulatory Commission ("Commission") caused the following entry to be made in this Cause:

On October 13, 2004, the Indiana Office of Utility Consumer Counselor ("OUCC") filed a *Verified Motion for Leave to File Testimony and Exhibits Under Seal* ("Motion") in the above captioned Cause. In its Motion, the OUCC indicates that portions of its prefiled testimony and exhibits that it intends to submit in this Cause contain information that has been designated as confidential by Northern Indiana Public Service Company ("NIPSCO") and is subject to a private confidentiality agreement ("Confidentiality Agreement") between the parties. The OUCC attached the Confidentiality Agreement to the Motion as "Exhibit A." According to the Motion, the information to be filed by the OUCC includes financial projections and cost analyses prepared by NIPSCO, and submitted to the OUCC under a claim of confidentiality in accordance with the terms of the Confidentiality Agreement. Motion at 1.

Pursuant to 170 IAC 1-1.1-4, if a party desires to submit information that it believes is confidential in accordance with IC 8-1-2-29 and IC 5-14-3, the party shall apply for a finding by the Commission that the information is confidential. The written application for confidentiality must be accompanied by a sworn statement or testimony of a party that describes the following:

- (1) The nature of the confidential information.
- (2) The reasons why the information should be treated as confidential information pursuant to IC 8-1-2-29 and IC 5-14-3.
- (3) The efforts the party has made to maintain the confidentiality of the information.

Ind. Code 5-14-3-2 defines "trade secret" by referencing the definition found in Indiana's Uniform Trade Secret Act which, at Ind. Code 24-2-3-2, states:

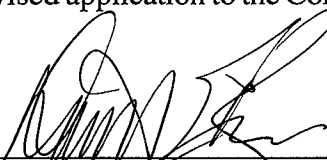
"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

While the Commission recognizes that the information to be submitted by the OUCC in this Cause may be subject to a Confidentiality Agreement, this fact alone cannot substitute for independent verification to the Commission that the information received from NIPSCO constitutes a "trade secret" as set forth in Ind. Code 5-14-3-2. NIPSCO is the only party that can independently verify such a claim.

It is not the objective of the Presiding Officers overly complicate the submission of confidential information under our rules. To the extent the information that the OUCC seeks to submit has already been preliminarily determined to be confidential, it is reasonable that the confidentiality determination should continue when the same information covered by the prior determination is submitted by the OUCC or any other party. However, there is no indication in the Motion, or in the Commission's file, that the information that the OUCC intends to submit has previously been found to be confidential on a preliminary basis in this Cause. Therefore, the OUCC (in cooperation with NIPSCO) should submit a revised application to the Commission that meets the requirements set forth in 170 IAC 1-1.1-4.

**IT IS SO ORDERED.**

  
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David E. Ziegner, Commissioner

  
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Scott R. Storms, Chief Administrative Law Judge

Date: October 25, 2004